



State of South Carolina

Office of the Governor

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June 18, 2007

The Honorable Robert W. Harrell, Jr.
Speaker of the House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Mr. Speaker and Members of the House:

I am hereby vetoing and returning without my approval H. 3304, R-159.

I admire and appreciate what our law enforcement does on a daily basis. In their work, there is always a balance between the civil liberties unique to our culture and enhancements that would allow them greater odds in catching those who perpetrate crimes on the populace at large. While certainly enhancing law enforcement's ability to do their noble work, I believe this bill takes too big a bite from the foundation of civil liberty and privacy that are the hallmark of the American way of life.

Allow me to explain.

Currently law enforcement collects fingerprints for investigative purposes because fingerprints are identity *factors* and nothing more. They contain no personal information. A DNA sample, by contrast, contains a great deal of sensitive personal information. DNA includes, for example, information about disease predisposition, physical attributes, ancestry, and familial relationships.

To date, we have put safeguards on government's access to this personal information. Law enforcement currently has the authority to collect a DNA sample from an accused for comparison purposes – but *only after* a court order has been sought and granted. We believe this is a reasonable standard.

The Fourth Amendment to the Constitution guarantees that all people shall be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fourth Amendment is intended to establish a perimeter of personal integrity into which the government cannot intrude absent compelling reason. DNA databases would move the threshold in analyzing personal information from criminal investigation to surveillance - and given the personal nature of DNA material, we don't believe this is warranted without a court order as law now dictates.

Federal courts have, in fact, found that attaining a biological sample for DNA analysis can be considered a "search" under the Fourth Amendment – meaning there has to be a warrant. Custodial arrests, however, do not require warrants, so permitting law enforcement to attain DNA samples during warrantless arrests, therefore, stretches the boundaries of being constitutional.

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Though American society values personal liberties, we are the first to recognize that persons *convicted* of a crime must give up some of those liberties, including the protection against search and seizure. By limiting DNA collection to those who have been convicted of a crime, we ensure that no DNA is collected unless that person has been granted due process of rights and has experienced a full vetting by the judicial system. If DNA collection were expanded to include custodial arrest for felonies, why stop there? Law enforcement could inevitably stop other crimes as well with an even further expanded database. We think the clear divide created with conviction has served us well because one of the central tenets of American law is that one is presumed innocent until proven guilty.

This legal right applies to everyone – even those who have been convicted of wrongdoing in the past. What makes this bill even more troubling is that, although many charges are dropped and many people charged are proven not guilty, the DNA specimens would not be automatically destroyed – and procedures for removal are predicated on the accused taking action.

Finally, custodial arrest is not a particularly strong standard. Innocent people are sometimes wrongfully arrested. If one believes that knowledge is power then without limiting DNA collection to those who have been convicted – not simply charged – we confer an awesome power to government given the personal information government would now house.

We believe expanding the DNA database according to H. 3304 represents an overreach by government and an erosion of personal liberty.

For these reasons, I am vetoing H. 3304, R-159.

Sincerely,



Mark Sanford

cc: The Honorable J.M. Neal
The Honorable Gerald Malloy